

REMARKS**Claims in the Application**

Claims 39 through 45 and 51 through 57 are pending in this United States Patent Application. Claims 55 through 57 are withdrawn from consideration as being drawn to a non-elected invention. Thus, claims 39-45 and 51-54 are being prosecuted in this Application.

Claim Rejections - 35 USC § 112

The Examiner rejected claims 39 and 51 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants have proceeded as follows to overcome these rejections.

With respect to claim 39, in line 15, the words "that portion of" have been deleted such that the claims now reads in pertinent part as follows:

--at said predetermined location as a function of said predetermined cross-sectional area enclosed by the selected section of a continuous milk flow at said predetermined location--.

With respect to claim 39, in line 24, the words "that portion of" have been deleted such that the claims now reads in

pertinent part as follows:

--at said predetermined location as a function of said predetermined cross-sectional area enclosed by the selected section of a continuous milk flow at said predetermined location--.

With respect to claim 51, in line 24, the words "that portion of" have been deleted and at line 16 the word "if" has been deleted and replaced with the word --of-- such that the claims now reads in pertinent part as follows:

--at said predetermined location as a function of said predetermined cross-sectional area enclosed by the selected section of said continuous milk flow at said predetermined location--.

With respect to claim 51, in line 23, the words "that portion of" have been deleted such that the claims now reads in pertinent part as follows:

--for determining the height of said selected section of the continuous milk flow at said known distance as a function of said predetermined cross-sectional area enclosed by the selected section of said continuous milk flow at said known distance--.

By deleting the words "that portion of" from the above lines of claim 39 and 51, the reference is now directly to "said predetermined cross-sectional-area enclosed by the selected section" thereby eliminating a need for an antecedent basis as it is the "said predetermined cross-sectional-area" being referenced as opposed to "that portion of" the "said predetermined cross-sectional-area".

With the above amendments to claims 39 and 51, the rejection of claims 39 and 51 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been overcome.

The Examiner rejected claims 40-45 and 53-54 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been overcome for the same reasons as the rejected subject matter of claims 39 and 51.

As set forth above, the above amendments to claims 39 and 51 have overcome the rejection of claims 39 and 51 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Since the rejection

of the subject matter of claims 39 and 51 has been overcome, then the rejection of claims 40-45 and 53-54 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has likewise been overcome for the same reasons as the rejected subject matter of claims 39 and 51 have been overcome.

With respect to the rejection of claim 41, line 6 and claim 51, line 34, applicants have proceed as follows.

With respect to claim 41, line 6, the word "said" has been deleted and replaced with the words --the varying-- such that the claim now reads in pertinent part as follows:

--said milk flow from the varying height of the selected section--.

With respect to claim 51, line 34, the word "said" has been deleted and replaced with the words --the varying-- such that the claim now reads in pertinent part as follows:

--said milk flow from the varying height of the selected section--.

Thus, the rejections of claims 41 and 51 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been overcome.

Allowable Subject Matter

Applicants notes and appreciates that claims 39-45 and 51-54 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph.

Applicants have amended claims 39, 41 and 51 under 35 U.S.C. 112, second paragraph, to overcome the rejections of those the claims as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been overcome.

As such claims 39-45 and 51-54 are now allowable since the same have been rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph discussed above.

SUMMARY

Applicants' have amended Claims 39, 41 and 51 to overcome the rejections by the Examiner.

Claims 39-45 and 51-54 are verily believed to define patentable subject matter.

The Examiner is respectfully requested to determine that claims 39-45 and 51-54 are patentable and issue a Notice of Allowability and a formal Notice of Allowance.

Respectfully submitted,



Daniel J. Meaney, Jr.
Registration No. 22,179
Attorney for Applicants

DANIEL J. MEANEY, JR.
P. O. Box 22307
Santa Barbara, California 93121-2307
Telephone: (805) 687-6909
Dated: December 21, 2005

269 55761amen122105